

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LAURA VANCE,

Plaintiff,

vs.

MARK T. CASE and JANE DOE CASE,  
husband and wife; SUTTELL &  
HAMMER, P.S.; SUTTELL &  
ASSOCIATES, P.S.; CAITLIN R.  
FINLEY and JOHN DOE FINLEY, wife  
and husband; and MALISA L. GURULE  
and JOHN DOE GURULE, wife and  
husband,

Defendants.

No. CV-10-036-LRS

PROTECTIVE ORDER

On October 7, 2010, the parties filed a Joint Motion For Issuance Of  
Protective Order (Ct. Rec. 23).

1 Based upon the parties' stipulation, the following protective order is  
2 HEREBY ENTERED:

3 **I. PURPOSES AND LIMITATIONS**  
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5 Disclosure and discovery activity in this action may involve production of  
6 confidential, proprietary, or private information for which special protection from  
7 public disclosure and from use for any purpose other than prosecuting this  
8 litigation would be warranted. This Order does not confer blanket protections on  
9 all disclosures or responses to discovery and that the protection it affords extends  
10 only to the limited information or items that are entitled, under the applicable legal  
11 principles, to treatment as confidential. As set forth in Section 10, below, this  
12 Protective Order creates no entitlement to file confidential information under seal;  
13 the procedures that must be followed and the standards that will be applied when a  
14 Party seeks permission from the Court to file material under seal will be governed  
15 by applicable law.  
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18 **1. DEFINITIONS**  
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20 1.1. Party: any party to this action, including all of its officers, directors,  
21 employees, consultants, retained experts, and outside counsel (and their support  
22 staff).  
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1           1.2. Disclosure or Discovery Material: all items or information, regardless  
2 of the medium or manner generated, stored, or maintained (including, among other  
3 things, testimony, transcripts, or tangible things) that are produced or generated in  
4 disclosures or responses to discovery in this matter.  
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6           1.3. "Confidential" Information or Items: information (regardless of how  
7 generated, stored or maintained) or tangible things that qualify for protection under  
8 standards developed under Fed. R. Civ. P. 26(c).  
9

10           1.4. Receiving Party: a Party that receives Disclosure or Discovery  
11 Material from a Producing Party.

12           1.5. Producing Party: a Party or non-party that produces Disclosure or  
13 Discovery Material in this action.  
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15           1.6. Designating Party: a Party or non-party that designates information or  
16 items that it produces in disclosures or in responses to discovery as "Confidential."  
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18           1.7. Protected Material: any Disclosure or Discovery Material that is  
19 designated as "Confidential."

20           1.8. Outside Counsel: attorneys who are not employees of a Party but who  
21 are retained to represent or advise a party in this action.

22           1.9. House Counsel: attorneys who are employees of a Party.  
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1           1.10. Counsel (without qualifier): Outside Counsel and House Counsel (as  
2 well as their support staffs).

3           1.11. Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its/her/his counsel to  
5 serve as an expert witness or as a consultant in this action and who is not a past or  
6 a current employee of a Party or of a competitor of a Party and who, at the time of  
7 retention, is not anticipated to become an employee of a Party or a competitor of a  
8 Party. This definition includes a professional jury or trial consultant retained in  
9 connection with this litigation.  
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11           1.12. Professional Vendors: persons or entities that provide litigation  
12 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
13 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)  
14 and their employees and subcontractors.  
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## 16           **2. SCOPE**

17           The protections conferred by this Order cover not only Protected Material  
18 (as defined above), but also all copies, excerpts, summaries, or compilations  
19 thereof, plus testimony, conversations, or presentations by parties or counsel to or  
20 in court or in other settings that might reveal Protected Material.  
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1           **3.     DURATION**

2           Even after the termination of this litigation, the confidentiality obligations  
3 imposed by this Order shall remain in effect until a Designating Party agrees  
4 otherwise in writing or a Court order otherwise directs.  
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6           **4.     DESIGNATING PROTECTED MATERIAL**

7           4.1.   Exercise of Restraint and Care in Designating Material for Protection.

8           Each Party or non-party that designates information or items for protection under  
9 this Order must use good faith efforts to limit any such designation to specific  
10 material that qualifies under the appropriate standards. A Designating Party must  
11 use good faith efforts to designate for protection only those parts of material,  
12 documents, items, or oral or written communications that qualify - so that other  
13 portions of the material, documents, items, or communications for which  
14 protection is not warranted are not swept unjustifiably within the ambit of this  
15 Order.  
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18           Mass, indiscriminate, or routinized designations are prohibited. Designations  
19 that are shown to be clearly unjustified, or that have been made for an improper  
20 purpose (e.g., to unnecessarily encumber or retard the case development process,  
21 or to impose unnecessary expenses and burdens on other parties), may expose the  
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1 Designating Party to sanctions. If it comes to a Party's or a non-party's attention  
2 that information or items that it designated for protection do not qualify for  
3 protection, that Party or non-party must promptly notify all other parties that it is  
4 withdrawing the mistaken designation.  
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6 4.2. Manner and Timing of Designations. Except as otherwise provided in  
7 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise  
8 stipulated or ordered, material that qualifies for protection under this Order must be  
9 clearly so designated before the material is disclosed or produced.  
10

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (apart from transcripts of  
13 depositions or other pretrial or trial proceedings), that the Producing Party affix the  
14 legend "CONFIDENTIAL" at the top of each page that contains protected material.  
15 If only a portion or portions of the material on a page qualifies for protection, the  
16 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
17 appropriate markings in the margins).  
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20 A Party or non-party that makes original documents or materials available  
21 for inspection need not designate them for protection until after the Inspecting  
22 Party has indicated which material it would like copied and produced. During the  
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1 inspection and before the designation, all of the material made available for  
2 inspection shall be deemed "CONFIDENTIAL." After the Inspecting Party has  
3 identified the documents it wants copied and produced, the Producing Party must  
4 determine which documents, or portions thereof, qualify for protection under this  
5 Order, then, before producing the specified documents, the Producing Party must  
6 affix the legend "CONFIDENTIAL" at the top of each page that contains Protected  
7 Material. If only a portion of the material on a page qualifies for protection, the  
8 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
9 appropriate markings in the margins).

12 (b) for testimony given in deposition or in other pretrial or trial  
13 proceedings, that the party or non-party offering or sponsoring the testimony  
14 identify on the record, before the close of the deposition, hearing, or other  
15 proceeding, all protected testimony. When it is impractical to identify separately  
16 each portion of testimony that is entitled to protection, and when it appears that  
17 substantial portions of the testimony may qualify for protection, the party or non-  
18 party that sponsors, offers, or gives the testimony may invoke on the record (before  
19 the deposition or proceeding is concluded) a right to have up to 20 days to identify  
20 the specific portions of the testimony as to which protection is sought. Only those  
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1 portions of the testimony that are appropriately designated for protection within the  
2 20 days shall be covered by the provisions of this Stipulated Protective Order.

3 Transcript pages containing Protected Material must be separately bound by  
4 the court reporter, who must affix to the top of each such page the legend  
5 "CONFIDENTIAL," as instructed by the party or non-party offering or sponsoring  
6 the witness or presenting the testimony.  
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8 (c) for information produced in some form other than documentary,  
9 and for any other tangible items, that the Producing Party affix in a prominent  
10 place on the exterior of the container or containers in which the information or  
11 item is stored the legend "CONFIDENTIAL." If only portions of the information  
12 or item warrant protection, the Producing Party, to the extent practicable, shall also  
13 identify the protected portions.  
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16 4.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
17 failure to designate qualified information or items as "Confidential" does not,  
18 standing alone, waive the Designating Party's right to secure protection under this  
19 Order for such material. If material is appropriately designated as "Confidential"  
20 after the material was initially produced, the Receiving Party, on timely  
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1 notification of the designation, must make reasonable efforts to assure that the  
2 material is treated in accordance with the provisions of this Order.

3 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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5 5.1. Timing of Challenges. Unless a prompt challenge to a Designating  
6 Party's confidentiality designation is necessary to avoid foreseeable substantial  
7 unfairness, unnecessary economic burdens, or a later significant disruption or delay  
8 of the litigation, a Party does not waive its right to challenge a confidentiality  
9 designation by electing not to mount a challenge promptly after the original  
10 designation is disclosed.

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12 5.2. Meet and Confer. A Party that elects to initiate a challenge to a  
13 Designating Party's confidentiality designation must do so in good faith and must  
14 begin the process by conferring directly (in voice to voice dialogue; other forms of  
15 communication are not sufficient) with counsel for the Designating Party. In  
16 conferring, the challenging Party must explain the basis for its belief that the  
17 confidentiality designation was not proper and must give the Designating Party ten  
18 (10) days to review the designated material, to reconsider the circumstances, and, if  
19 no change in designation is offered, to explain the basis for the chosen designation.  
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1 A Challenging Party may proceed to the next stage of the challenge process only if  
2 it has engaged in this meet and confer process first.

3 5.3. Formal Challenge to Designation. If, after engaging in the meet and  
4 confer process, a Challenging Party still contends that a confidentiality designation  
5 was not proper, the Challenging Party may at any time give written notice to the  
6 Designating Party stating its objection to the confidentiality designation. The  
7 Designating Party has twenty-five (25) days from receipt of such written notice to  
8 apply to the Court for an order specifically designating the Disclosure or Discovery  
9 Material at issue as confidential. The party seeking such an order has the burden of  
10 establishing good cause for the Disclosure or Discovery Material to be treated as  
11 confidential.  
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13 5.4. Treatment of Information While Challenge is Pending.  
14 Notwithstanding any challenge to the designation of Disclosure or Discovery  
15 Material as confidential, all materials designated as such must be treated as such  
16 and subject to this order until one of the following Occurs:  
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20 (a) the Designating Party withdraws its confidentiality designation  
21 in writing;  
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1 (b) the Designating Party fails to apply to the Court for an order  
2 designating the material confidential within the time period specified above after  
3 receipt of a written challenge to such designation; or  
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5 (c) the Court decides the material at issue is not subject to  
6 protection as confidential under this order.

7 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

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9 6.1. Basic Principles. A Receiving Party may use Protected Material that is  
10 disclosed or produced by another party or by a non-party in connection with this  
11 case only for prosecuting, defending, or attempting to settle this litigation. Such  
12 Protected Material may be disclosed only to the categories of persons and under  
13 the conditions described in this Order. When the litigation has been terminated, a  
14 Receiving Party must comply with the provisions of section 11, below (FINAL  
15 DISPOSITION). Protected Material must be stored and maintained by a Receiving  
16 Party at a location and in a secure manner that ensures that access is limited to the  
17 persons authorized under this Order.  
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20 6.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless  
21 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
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1 Receiving Party may disclose any information or item designated  
2 CONFIDENTIAL only to:

3 (a) the Receiving Party's Outside Counsel of record in this action,  
4 as well as employees of said Counsel to whom it is reasonably necessary to  
5 disclose the information for this litigation and who have signed the "Agreement to  
6 Be Bound by Protective Order" that is attached hereto as Exhibit A;

7 (b) the named parties to this litigation and the officers, directors,  
8 and employees (including House Counsel) of the Receiving Party to whom  
9 disclosure is reasonably necessary for this litigation and who have signed the  
10 "Agreement to Be Bound by Protective Order" (Exhibit A);

11 (c) experts (as defined in this Order) of the Receiving Party to  
12 whom disclosure is reasonably necessary for this litigation and who have signed  
13 the "Agreement to Be Bound by Protective Order" (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters and videographers, and their staffs, present at  
16 any hearing, deposition, or trial who have signed the "Agreement to Be Bound by  
17 Protective Order" (Exhibit A);

1 (f) professional vendors to whom disclosure is reasonably  
2 necessary for this litigation and who have signed the "Agreement to Be Bound by  
3 Protective Order" (Exhibit A);  
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5 (g) during their depositions, witnesses in the action to whom  
6 disclosure is reasonably necessary and who have signed the "Agreement to Be  
7 Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony  
8 or exhibits to depositions that reveal Protected Material must be separately bound  
9 by the court reporter and may not be disclosed to anyone except as permitted under  
10 this Stipulated Protective Order; and  
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12 (h) the author of the document or the original source of the  
13 information.  
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15 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
16 **PRODUCED IN OTHER LITIGATION**

17 If a Receiving Party is served with a subpoena or an order issued in other  
18 litigation that would compel disclosure of any information or items designated in  
19 this action as "CONFIDENTIAL," the Receiving Party must so notify the  
20 Designating Party, in writing (by fax, if possible) immediately and in no event  
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1 more than three (3) court days after receiving the subpoena or order. Such  
2 notification must include a copy of the subpoena or court order.

3       The Receiving Party also must immediately inform in writing the party who  
4 caused the subpoena or order to issue in the other litigation that some or all the  
5 material covered by the subpoena or order is the subject of this Protective Order. In  
6 addition, the Receiving Party must deliver a copy of this Stipulated Protective  
7 Order promptly to the party in the other action that caused the subpoena or order to  
8 issue.  
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11       The purpose of imposing these duties is to alert the interested parties to the  
12 existence of this Protective Order and to afford the Designating Party in this case  
13 an opportunity to try to protect its confidentiality interests in the court from which  
14 the subpoena or order issued. The Designating Party shall bear the burdens and the  
15 expenses of seeking protection in that court of its confidential material - and  
16 nothing in this Order should be construed as authorizing or encouraging a  
17 Receiving Party in this action to disobey a lawful directive from another court.  
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20       **8.     UNAUTHORIZED     DISCLOSURE     OF     PROTECTED**  
21       **MATERIAL**

1 If a Receiving Party learns that, by inadvertence or otherwise, it has  
2 disclosed Protected Material to any person or in any circumstance not authorized  
3 under this Stipulated Protective Order, the Receiving Party must immediately  
4 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use  
5 its best efforts to retrieve all copies of the Protected Material, (c) inform the person  
6 or persons to whom unauthorized disclosures were made of all the terms of this  
7 Order, and (d) request such person or persons to execute the "Acknowledgment  
8 and Agreement to Be Bound" that is attached hereto as Exhibit A.  
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#### 11 **9. FILING PROTECTED MATERIAL**

12 Without written permission from the Designating Party or a Court order  
13 secured after appropriate notice to all interested persons, a Party may not file in the  
14 public record in this action any Protected Material. A Party that seeks to file under  
15 seal any Protected Material must comply with applicable law.  
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#### 17 **10. FINAL DISPOSITION**

18 Unless otherwise ordered or agreed in writing by the Producing Party, within  
19 sixty (60) days after the final termination of this action, each Receiving Party must  
20 return all Protected Material to the Producing Party. As used in this subdivision,  
21 "all Protected Material" includes all copies, abstracts, compilations, summaries or  
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1 any other form of reproducing or capturing any of the Protected Material. With  
2 permission in writing from the Designating Party, the Receiving Party may destroy  
3 some or all of the Protected Material instead of returning it. Whether the Protected  
4 Material is returned or destroyed, the Receiving Party must submit a written  
5 certification to the Producing Party (and, if not the same person or entity, to the  
6 Designating Party) by the sixty day deadline that identifies (by category, where  
7 appropriate) all the Protected Material that was returned or destroyed and that  
8 affirms that the Receiving Party has not retained any copies, abstracts,  
9 compilations, summaries or other forms of reproducing or capturing any of the  
10 Protected Material. Notwithstanding this provision, Counsel are entitled to retain  
11 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
12 correspondence or attorney work product, even if such materials contain Protected  
13 Material. Any such archival copies that contain or constitute Protected Material  
14 remain subject to this Protective Order as set forth in Section 4 (DURATION),  
15 above.

## 16 **11. MISCELLANEOUS**

17 **11.1. Right to Further Relief.** Nothing in this Order abridges the right of any  
18 person to seek its modification by the Court in the future.  
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1 11.2. Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no party waives any right it otherwise would have to object to  
3 disclosing or producing any information or item on any ground not addressed in  
4 this Stipulated Protective Order. Similarly, no party waives any right to object on  
5 any ground to use in evidence of any of the material covered by this Protective  
6 Order. Accordingly, the Joint Motion For Issuance Of A Protective Order (Ct.  
7 Rec. 23), is **GRANTED**.  
8

9  
10 IT IS SO ORDERED. The District Court Executive is directed to enter this  
11 Order and distribute copies to counsel.

12 DATED this 22nd day of October, 2010.  
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14 *s/Lonny R. Suko*

15 \_\_\_\_\_  
16 LONNY R. SUKO  
17 Chief U. S. District Court Judge

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